

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DARREN DARNELL COLEMAN,	:	CIVIL ACTION NO. 1:15-CV-847
	:	
Plaintiff	:	(Chief Judge Conner)
	:	
v.	:	
	:	
JOHN E. WETZEL, et al.,	:	
	:	
Defendants	:	

ORDER

AND NOW, this 29th day of February, 2016, upon consideration of the report (Doc. 21) of Magistrate Judge Karoline Mehalchick, recommending that the court grant in part and deny in part the motion (Doc. 16) to dismiss filed by defendants John E. Wetzel (“Wetzel”) and Jon D. Fisher (“Fisher”), wherein Judge Mehalchick opines that the constitutional rights asserted by plaintiff Darren Darnell Coleman (“Coleman”) in Counts II and III of his complaint (Doc. 1) are clearly established for the purpose of denying qualified immunity, (see Doc. 21 at 8-12), but that Coleman fails to sufficiently plead a claim for violation of those constitutional rights against Wetzel and Fisher pursuant to Federal Rule of Civil Procedure 12(b)(6), (see id. at 12-17), and wherein Judge Mehalchick further recommends that the court grant Coleman leave to amend Counts II and III of his pleading to cure the deficiencies therein, and that the court order Coleman to identify and serve the yet-unnamed John and Jane Doe defendants, with the admonition that failure to comply will result in dismissal of the complaint against said defendants, (see id. at 17-19), and the court noting that Coleman has filed objections (Doc. 22) to the report, see FED.

R. Civ. P. 72(b), wherein Coleman contests Judge Mehalchick's application of the Rule 12(b)(6) standard of review; requests limited discovery in aid of curing his pleading; and notes that some of the John and Jane Doe defendants have now been identified, and the court further noting that defendants have filed a response (Doc. 23) to Coleman's objections, and, following a *de novo* review of the contested portions of the report, see Behar v. Pa. Dep't of Transp., 791 F. Supp. 2d 383, 389 (M.D. Pa. 2011) (citing 28 U.S.C. § 636(b)(1)(C); Sample v. Diecks, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989)), and applying a clear error standard of review to the uncontested portions, see Cruz v. Chater, 990 F. Supp. 375, 376-78 (M.D. Pa. 1999), the court finding Judge Mehalchick's legal analysis to be thorough, well-reasoned, and fully supported by the record, and finding Coleman's objections (Doc. 22) to be without merit, and further finding Coleman's discovery request raised therein to be both improper in form and substantially moot in light of defense counsel's indication that Wetzel and Fisher have already begun to provide Coleman with the discovery he seeks, (see Doc. 23 at 10), it is hereby ORDERED that:

1. The report (Doc. 21) of Magistrate Judge Mehalchick is ADOPTED.
2. Defendants' motion (Doc. 16) to dismiss Counts II and III of Coleman's complaint (Doc. 1) is granted in part and denied in part as follows:
 - a. The motion (Doc. 16) is DENIED without prejudice to the extent it seeks dismissal on the ground of qualified immunity.
 - b. The motion (Doc. 16) is GRANTED to the extent it seeks dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim.
3. Counts II and III of Coleman's complaint (Doc. 1) are DISMISSED without prejudice.

4. Coleman is granted leave to amend his complaint against all defendants, and to specifically identify and serve any John and Jane Doe defendants known to him, within thirty (30) days of the date of this order, consistent with paragraphs 2 and 3 above, and the report (Doc. 21) of Magistrate Judge Mehalchick.
5. This matter is REMANDED to Magistrate Judge Mehalchick for further proceedings.

/S/ CHRISTOPHER C. CONNER

Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania